

## **EXHIBIT 4**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

LATOYA K. BENTON,	)	
ADMINISTRATOR OF THE ESTATE	)	
OF XZAVIER D. HILL, DECEASED,	)	
	)	
Plaintiffs,	)	Civil Action No.
V.	)	3:22-cv-25 HEH
	)	
SETH W. LAYTON, et al,	)	
Defendants.	)	

DEPOSITION UPON ORAL EXAMINATION OF  
PERRY ALBERT BARTELS  
TAKEN ON BEHALF OF THE PLAINTIFF  
TUESDAY, JANUARY 24, 2023  
HAMPTON, VIRGINIA

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1                   Deposition upon oral examination of PERRY  
2   ALBERT BARTELS, taken on behalf of the Plaintiff,  
3   before Antonio Spratley, Court Reporter, a Notary  
4   Public for the Commonwealth of Virginia at large, taken  
5   pursuant to notice, commencing at 11:00 a.m. on  
6   Tuesday, January 24, 2023, at the offices of The  
7   Verbena Askew Law Firm, P.C., 2 Eaton Street, Suite  
8   708, Hampton, Virginia.

9  
10                   PERRY ALBERT BARTELS was sworn and  
11   deposed on behalf of the Plaintiff as follows:

12  
13                   EXAMINATION

14   BY MS. ASKEW:

15                   Q.     My name is Verbena Askew, and I represent  
16   Ms. LaToya Benton, who is the administrator of the  
17   estate for Xzavier D. Hill, who's the deceased in this  
18   case. I am going to ask you a series of questions and  
19   I would ask that you answer out loud, don't nod your  
20   head, don't say uh-huh or uh-uh so that he can  
21   transcribe it. I would ask also that if you need a  
22   break, that's fine, but don't take a break in the  
23   middle of a question.

24                   So, if you would state your full name?

25                   A.     Perry Albert Bartels.

1           Q.     Mr. Bartels, let's start with, where are  
2     you employed now?

3           A.     I'm currently at the Hampton Roads  
4     Criminal Justice Training Academy.

5           Q.     Are you actually an employee there?

6           A.     Yes, ma'am.

7           Q.     And how long have you been there?

8           A.     Since December of 2018, a little over  
9     four years.

10          Q.     Let's take a look at your --

11                 MS. ASKEW: If you want to mark this,  
12     please.

13                 (Whereupon, Deposition Exhibit No. 1 was  
14     marked.)

15     BY MS. ASKEW:

16          Q.     Take a look at that, Mr. Bartels, and  
17     tell me if that looks to be the report that you  
18     provided in the case of LaToya K. Benton, Administrator  
19     of the Estate of Xzavier D. Hill, deceased, v. Seth W.  
20     Layton and Benjamin I. Bone?

21          A.     This is the first one, yes, ma'am, it  
22     appears to be.

23          Q.     And tell me, how did you come to be the  
24     expert in this case?

25          A.     I was contacted by Mr. Calvin Brown.

1 Q. And prior to that, had you done any work  
2 as a consultant or expert with Mr. Brown before?

3 A. No, ma'am.

4 Q. And had you done any work or been a  
5 consultant or an expert in any cases involving the  
6 Attorney General's Office?

7 A. I'm sorry? Whose office?

8 Q. The Attorney General?

9 A. No, ma'am.

10 Q. And tell me -- you indicated that -- your  
11 experience is that -- you were retained at what point  
12 in this case?

13 A. I don't remember the date. I was  
14 contacted by Mr. Brown. He gave me the initial set of  
15 facts, and I believed that as long as they were  
16 accurate according to what he explained, I believed  
17 that I could provide an opinion regarding those facts.

18 Q. And you don't remember what date that  
19 was?

20 A. I do not. I want to say it was some time  
21 in maybe November or December of last year.

22 Q. Mr. Bartels, you indicated -- it looks  
23 like in your report, you're being compensated at the  
24 rate of \$250 per hour; is that correct?

25 A. Yes, ma'am.

1           Q.     And \$2,500 a day for your field work and  
2 court testimony?

3           A.     Correct.

4           Q.     How much so far have you billed the  
5 Attorney General's Office?

6           A.     I'm trying to remember. I didn't put it  
7 on here and I didn't bring that with me. I believe I  
8 billed close to 30 hours.

9           Q.     Okay.

10          A.     You're talking money-wise?

11          Q.     Yes, sir.

12          A.     Actually, I think I could give you that.  
13 It was \$6,750 so far.

14          Q.     And you indicate that your compensation  
15 is not contingent upon the opinion that you've  
16 provided?

17          A.     That is correct.

18          Q.     Now, let's talk about what's in this  
19 first exhibit. It indicates -- we're on page 1. It  
20 says that you began your twenty-four-year career with  
21 the Newport News Police Department and Patrol Division  
22 as a patrol officer, answering calls for service. What  
23 did that entail?

24          A.     Basically, being assigned to a district,  
25 and then the dispatch center would receive calls for



1 police assistance, and then they would assign them with  
2 an officer based on the district where that request has  
3 been made, and then who works in that district. So I  
4 would answer those calls for service as well as patrol  
5 that district and others for general police services --  
6 monitoring traffic, monitoring for anyway that police  
7 may be able to provide assistance.

8 Q. Prior to you being hired by the Newport  
9 News Police Department, what was your educational  
10 background?

11 A. Before the Newport News Police  
12 Department, I was attending Thomas Nelson Community  
13 College, and I was seeking an associate's degree in  
14 criminal justice.

15 Q. Did you receive that prior to being  
16 employed by the Newport News Police Department?

17 A. No, ma'am. They hired me before I was  
18 able to complete it.

19 Q. Okay. Now, so you had a high school  
20 degree when you were employed by the Newport News  
21 Police Department?

22 A. Yes, ma'am.

23 Q. And did you go through a police training  
24 academy?

25 A. I did, yes, ma'am.

1 Q. Tell me where you went.

2 A. I actually went to what is now the  
3 Hampton Roads Criminal Justice Training Academy where I  
4 currently work. I think it went by a different name  
5 back then, but it was located on Thomas Street here in  
6 the City of Hampton.

7 Q. And is that where the Newport News Police  
8 Department trained all of their employees who were with  
9 the police department at that time?

10 A. At the time, yes, ma'am.

11 Q. How many months did you go through that  
12 training?

13 A. That academy was -- I don't recall  
14 exactly. Approximately four months.

15 Q. After the four months, then did you start  
16 working with the Newport News Police Department?

17 A. Yes.

18 Q. And were you working under supervision of  
19 someone?

20 A. A field training officer, yes, ma'am.

21 Q. Tell me what that field training officer  
22 did for you in terms of -- what was the role in helping  
23 you?

24 A. The field training officer's role was to  
25 act as a guide through field police work -- my

1 introduction to field police work, and also to ensure  
2 that I was completing my tasks properly, appropriately  
3 and completely, and to serve as a mentor and leader as  
4 a senior officer, and to set an example of what they  
5 think that I should do as a police officer.

6 Q. Now, when they were training you, for a  
7 field training officer, did they take the lead when you  
8 were out in the field, or did you take the lead?

9 A. It depends on what the call was.  
10 Initially, they would take the lead as kind of a  
11 demonstration to make sure I understood what was  
12 expected of me, and then the next time we got a similar  
13 call, they might let me take the lead.

14 Q. Was it a teaching moment, I guess, is the  
15 question I have. For you, a learning, but in terms of  
16 the field training officer, was it a teaching moment  
17 from their perspective?

18 A. I think they tried to find as many  
19 teaching moments as possible. That really was the  
20 underlying purpose of it. So, yes.

21 Q. Did you learn?

22 A. I learned quite a bit. I had a very  
23 good --

24 Q. Did you have one or more than one?

25 A. I had three field training officers. My

1 first one was the best. He did an outstanding job.

2 Q. Do you remember his name?

3 A. Morgan Tiegens (phonetic).

4 Q. Morgan who?

5 A. Morgan Tiegens.

6 Q. Tiegens. I'm thinking if I remember him.

7 So after three years there, then you became a field  
8 training officer; is that correct?

9 A. Yes, ma'am.

10 Q. And then at the time you continued to  
11 serve as a patrol for three additional years and  
12 provide on-the-job training to new officers?

13 A. Yes, ma'am, doing exactly what my field  
14 training officers did for me.

15 Q. Do you recall any particular things that  
16 stood out when you were the field training officer  
17 during that time? I know it was a while ago.

18 A. It was a while ago. I think the only  
19 thing that stood out to me was trying to emulate, like  
20 I said, what my primary field training officer did for  
21 me, and that was to do police work to the best of our  
22 ability, to treat people with dignity and respect at  
23 every opportunity, and also continuing and striving to  
24 learn and improve.

25 Q. At the time that you were the field

1 training officer, did you encounter any times where you  
2 had to draw your weapon?

3 A. Yes.

4 Q. Do you recall it specifically? Were  
5 there many or just a few?

6 A. There were many. We often did it during  
7 times when we would search a building. We did it  
8 during times when we would conduct a high-risk traffic  
9 stop, or confront an armed subject. Unfortunately,  
10 there were many and I'm unable to really....

11 Q. You don't remember any of them. Do any  
12 stick out?

13 A. Not in particular. I mean, there were a  
14 couple of incidents of having discharged my weapon.  
15 But other than that, incidents of drawing it were  
16 actually quite frequent.

17 Q. Do you recall the ones where you actually  
18 had to discharge?

19 A. Yes, ma'am.

20 Q. Can you describe those for me?

21 A. Sure. The first one, I believe, was in  
22 1996 or 1997. I was on -- I don't even remember the  
23 nature of the call, but I was at a house, checking  
24 around the house due to a call that I was on. The  
25 neighbor had a pit bull that was unsecured. It looked

1 up and saw me and it charged straight at me. I drew  
2 and fired one shot, and that deterred the dog from  
3 attacking. I did hit him, but I wounded it. That  
4 deterred him from continuing his attack. That was the  
5 only time as a patrol officer. Did you want me to  
6 continue through all of the examples?

7 Q. Yes, if you remember.

8 A. The next one after that, I don't remember  
9 the order of these two, but they were also dogs. I was  
10 a police sergeant -- a patrol sergeant at the time.  
11 Again, one of them in particular was a call for a loose  
12 vicious dog that was harassing people and chasing  
13 people. That one, we had contained in an alley. We  
14 were waiting for animal control to respond. I believe  
15 that one was 2009. I do remember that one was on  
16 Easter, but I don't remember the year. I think it was  
17 about 2009. We had him contained, waiting for animal  
18 control when at one point he just lunged in a vicious  
19 manner. So, I fired. Then my partner had deployed his  
20 taser pretty much at the same time. I missed. He  
21 connected. So after the taser cycle, the dog got up  
22 and ran away.

23 After that, there was another incident of  
24 -- I was on a call with a sergeant with two other  
25 officers. We were checking an alarm at 35th and

1     Jefferson -- the Pizza King, I believe it was. We were  
2     back in the area of the drive-through, and a person who  
3     lived on 34th Street let her dog out. That was  
4     nighttime. She let the dog out to go to the bathroom,  
5     and then she went back inside -- left the dog outside.  
6     It saw us across the street, ran over to us, and had  
7     basically taken a position and was holding its ground  
8     and was challenging us, so to speak -- barking,  
9     growling, snarling.

10                 I had my weapon drawn. Before we could  
11     really kind of discuss any options that we had, the dog  
12     lunged at me and I fired, wounding that dog, as well.  
13     All of those dogs ultimately lived through their  
14     incidents.

15                 After that, I was on the SWAT Team. This  
16     incident occurred in November of 2011. It was November  
17     6th. It was a Sunday night. We got a call for a SWAT  
18     response. I was a team leader at the time. As I was  
19     driving out there, our team commander called me up, and  
20     he said, "I'm not going to make, I'm sick, but it's a  
21     hostage situation, and they were in a vehicle."

22                 I arrived out there, started organizing  
23     the team, gathering information, and then rapidly  
24     deploying whatever resources we had available --  
25     snipers and such -- trying to coordinate with the

1 negotiators to get them ready to do what they needed to  
2 do so we could all work together in hopes of resolving  
3 this. By the time we arrived on the scene, the suspect  
4 had already said, I want a phone; you have ten minutes  
5 to get me a phone. By the time we got there, we were  
6 already past the ten minutes. So we weren't really  
7 sure what that meant as far as timeline goes.

8 The team got organized enough that we  
9 deployed out there. We were told -- the information we  
10 were given is that this started as an abduction at  
11 gunpoint, a boyfriend with his ex-girlfriend in York  
12 County. It turned into a vehicle pursuit which ended  
13 at the dead-end street where it currently was at a  
14 standstill.

15 So we deployed out there. When we got  
16 out there, I could see that the vehicle was running.  
17 It was November, so it was a little cold outside. The  
18 windows were -- the side and the back windows were  
19 fogging up, but the windshield was clear. The suspect  
20 was hanging articles of clothing up in the window to  
21 prevent us from being able to see inside.

22 So I engaged him verbally. I asked him  
23 what he wanted. He demanded a phone. I assured him  
24 that we were working on getting him a phone. He was  
25 upset that we didn't have one because everybody carries



1 a cell phone. Even in 2011, most people had a cell  
2 phone.

3 So, he and I continued to talk, and I  
4 asked him who he wanted to call. He continued to  
5 demand a phone. As he was talking, he would roll -- he  
6 and the young lady were in the back seat of a Camaro.  
7 He would roll the window down and speak through a small  
8 crack in the window that he created, then he would sit  
9 back and roll it back up. The window was fogged, so it  
10 was very difficult to see him.

11 So, we continued to talk. I was trying  
12 to get him to talk about something else while we were  
13 working on getting him a phone. Finally, he stopped at  
14 one point. He grabbed her and pulled her in his lap,  
15 which was not a good sign to me. Our sniper indicated  
16 he could see through the windshield that they were  
17 writing something on a pad of paper and passing it back  
18 and forth in the car, but we didn't know what that  
19 meant.

20 Q. You mean between the hostage and the  
21 suspect?

22 A. Yes, ma'am. So as I continued to talk to  
23 him, finally she answered. Well, let me back up. I  
24 said, who is it that you want to call? His name was  
25 Chris. I said, "Chris, who do you want to call?" He

1 said, "The phone is not for me, it's for her." I said,  
2 "Well, why don't you let her out of the car and we'll  
3 let her make a phone call, and she can call whoever she  
4 wants." He said, "No. She's not going anywhere."  
5 Chris had made no clear threats. We were only given  
6 the information that was passed along to us in  
7 combination with our independent observations as we're  
8 out in the field.

9 Finally, Chris stopped talking to us. He  
10 let her go back into the passenger side in the back  
11 seat. I said, "Well, who is it that you want to call?"  
12 She responded, she said, "The phone is for me to call  
13 my kids." So I didn't take that to mean anything good,  
14 and at that point, I decided that Chris really had no  
15 intentions of resolving it with us, so it was really up  
16 to us to resolve it. I couldn't see him.

17 I was at the passenger side of a vehicle  
18 that was on the scene, looking through the driver side  
19 angle at the Camaro.

20 Q. At another car --

21 A. Yes. The initial pursuing police car  
22 that we had taken over as a position.

23 Q. So you were using that as cover?

24 A. Yes, ma'am. I had another officer at the  
25 back side of that same car. I moved to his position.

1 I could see the female was on the passenger's side in  
2 the back of the Camaro. I instructed that officer to  
3 let me know immediately if she moved. I went back to  
4 my position, as long as I didn't hear anything from  
5 him.

6 I was waiting for the suspect, Chris, to  
7 get close enough to the window that I was 90-plus  
8 percent certain as to where he was. When that  
9 happened, I hadn't heard anything from the other  
10 officer, meaning she was still over there in the clear,  
11 so I opened fire on Chris. Then the team moved up from  
12 a different location to extract her from the vehicle,  
13 to make sure she was safe.

14 Q. So, she was safe?

15 A. Yes.

16 Q. You managed to get her?

17 A. Yes. So, she was safe. Chris ended up  
18 being armed, as a hindsight issue.

19 Q. Were you aware he was armed at the time?

20 A. No, ma'am. Nobody had seen a gun. We  
21 were going off of the information we were given, and  
22 the information as it developed on the scene.

23 So, the other incident was April 29,  
24 2017. It was a Saturday morning. At about five  
25 o'clock, we got a page for an active shooter in an

1 establishment called The Pondo in Newport News. So,  
2 like I usually do, I called dispatch on my way down  
3 there because, as the team leader, I want information  
4 about what we are responding to so I can start  
5 formulating ideas in my head as to what resources we  
6 are going to need and a general idea of how I want to  
7 handle it. So I called them, and they said a man was  
8 in a bar, and he pulled out a gun and shot the  
9 bartender in the chest, and they can't make any headway  
10 talking to him. He's irrational. No shots had been  
11 fired for a few minutes now.

12 We responded down there. The patrol  
13 officers had set up on the establishment. They were  
14 actually outside when it evolved. It was an active  
15 shooter for them, but they had all their perimeter  
16 positions. So when we got there -- on my way there, I  
17 heard the dispatcher indicate that the bartender who  
18 was on the phone since before we got all the way up to  
19 the point we went through the door, he told the  
20 dispatcher, after he had been shot in the chest for  
21 some time, that he was cold and shaking and felt like  
22 he was passing out. So I understood the urgency in  
23 getting through.

24 So, when I got on the scene, one of the  
25 other team leaders arrived first. Although I was the

1 senior team leader by default, whichever one gets there  
2 first and begins to develop the plan, takes charge of  
3 that plan.

4 I arrived on the scene and started  
5 grabbing a few pieces of gear, and I jumped in with a  
6 small group that was getting ready to go across the  
7 street to go provide aid to the bartender. They put me  
8 up front. I'm assuming it's because I'm the most  
9 senior and experienced member of the team, they wanted  
10 that experience up front. Quite honestly, this was the  
11 type of a call that was a first for us even though I  
12 had been on the team for 19 years at that point.

13 So, we had finished making our  
14 preparations. We breached the door and went inside.  
15 As I was waiting for the rest of the team to come in  
16 behind me, I started peering through the next glass  
17 door that stood between us and the inside of the  
18 establishment. Right to where he was described to be  
19 was the suspect -- about 42 or 43 feet back in the  
20 establishment -- behind a partially opened or partially  
21 closed door, with a gun in his hand, waiting for us to  
22 come through. So, I engaged him immediately.

23 We entered, and then I covered the  
24 suspect, and they got all of the hostages out. There  
25 were two others along with the gentleman that had been

1 shot. So we got them out. We got aid to him, and then  
2 the suspect was -- he was deceased.

3 Q. You engaged the suspect. What do you  
4 mean? What did you do?

5 A. I shot him, yes, ma'am. I want to  
6 apologize if that sounds insensitive given the nature  
7 of why we're here, but it's easier for me to present it  
8 in a factual way. I don't mean for it to come across  
9 insensitive.

10 Q. We appreciate that. Do you recall any  
11 other incidents?

12 A. Those were the only incidents of having  
13 to discharge my firearm, ma'am.

14 Q. Now, still on page 1, you said you also  
15 obtained your state certifications as a General  
16 Defensive Tactics, Driving and Firearms Instructor.  
17 Where did you obtain those certifications?

18 A. The certifications were through the  
19 academy. We would go back there. They would put on  
20 instructor-level classes. We would attend and then  
21 finish off certifications through an apprenticeship  
22 under a previously certified instructor.

23 Q. It says you actively trained Newport News  
24 Academy recruits and experienced officers in the use of  
25 force as a support instructor to the department's

1 training division and regional police academy. Is that  
2 the academy where you're working at now?

3 A. Yes, ma'am.

4 Q. And what did you do in terms of -- it  
5 says you trained Newport News Academy recruits?

6 A. Yes, ma'am. We had what we called a  
7 pre-academy, and we would take our trainees prior to  
8 the academy starting and work with them a little bit.  
9 Then we had a post-academy. The regional academy  
10 trains lots of different agencies. They don't get  
11 policy specific. They stay fairly generic.

12 When the recruits would come back to us,  
13 we would give them department specific training that  
14 was related directly to our policies or the things that  
15 we chose to do in our department.

16 Q. Now, how did you create your policies  
17 with the Newport News Police Department? How did you  
18 create -- who did the policies?

19 A. I wouldn't create the policies.  
20 Obviously, the chief would ultimately sign off on them.  
21 Depending on the nature of the policies, either the  
22 chief would write it or they would take an existing  
23 policy and just amend it so that the current or  
24 existing chief was satisfied with what it said.

25 Q. And what was it based on? Is it a

1 criminal justice --

2 A. Department policies are specific to a  
3 particular chief's philosophy in many cases. Many  
4 different agencies have policies that are very, very  
5 similar, but in some ways, one chief may alter their  
6 policy on pursuits, for example, in a way that a  
7 neighboring jurisdiction would not. So they're kind of  
8 specific to a chief.

9 Q. So at this point, you said you "actively  
10 trained Newport News Academy recruits and experienced  
11 officers in the use of force as a support instructor to  
12 the department's Training Division and regional police  
13 academy."

14 A. Yes, ma'am.

15 Q. Now, how long had you been with the  
16 police department at that point?

17 A. At that point, I'd probably been with  
18 them about four years or so, maybe five years.

19 Q. Tell me, how did you go about training  
20 officers in the use of force at the time?

21 A. The role of the support instructor would  
22 be to assist during in-service. An in-service class  
23 might consist of 20 to 25 police officers attending  
24 training. So, if we were going to refresh on  
25 handcuffing, the training division might not have



1 enough instructors to circulate around the room and  
2 help everybody, so they would call in other support  
3 instructors that had the instructor's certification at  
4 the department to come in and assist. So, although my  
5 primary role was that of patrol officer, they would  
6 reassign me temporarily to help with the in-service  
7 class because I had the needed instructor's  
8 certification.

9 Q. In 2000, you transferred to the training  
10 division where you served eight years as a training  
11 staff member. You were assigned to review all use of  
12 force reports generated by the police department, which  
13 was approximately 100 to 150 force reports per year. I  
14 was curious about that when I read it, the 100 to 150  
15 per year. Describe what the process was. You received  
16 the complaints?

17 A. No, ma'am, they weren't complaints. They  
18 were just documented use of force from the patrol  
19 officers in the field.

20 Q. Tell me how that worked.

21 A. The policy dictates when an officer is  
22 generally required to report a use of force. And as an  
23 example, our policy might dictate that if you have to  
24 use force to overcome resistance by a suspect, they  
25 would require a use of force report. If you did a

1 takedown of somebody -- in other words, you forced them  
2 to the ground during the course of an arrest, that  
3 would require a use of force report. If you used a  
4 baton or pepper spray or a firearm, or struck somebody  
5 with a hand or a foot, then those would require a use  
6 of force report.

7 Q. Now, correct me if I'm wrong, but was it  
8 designed to try to help make the officers better  
9 officers?

10 A. I think it had several purposes. One was  
11 that any responsible agency wants to track its activity  
12 and monitor it. Another was, at least as far as my  
13 role goes, when I reviewed them, I looked to see what  
14 officers were doing in the field as compared to what we  
15 were training them in during in-service training.

16 Q. So you would take these reports, then  
17 you'd do what with them?

18 A. Review them. I would just look at the  
19 circumstances. Was this a call for service-generated  
20 activity? Was this an officer-generated activity?  
21 What was the arrest for? What did the suspect do? How  
22 did the officer respond? It's just the general overall  
23 circumstances to see what our officers were commonly  
24 experiencing and how they were commonly responding, and  
25 how they were handling and using their equipment. That

1 would give us the opportunity to see where we needed to  
2 do regular maintenance training with our officers.

3 Q. So when you found a problem, then what  
4 would you do?

5 A. It would depend on what the problem is or  
6 was. It might just be something that I would make note  
7 of, or it might be something that I would actually make  
8 a phone call to one of our assistant chiefs and say, I  
9 think we need to sit down and talk about this.

10 Q. And say it did not rise to the level  
11 where you took any action against the officer, but it  
12 gave you some concerns where you thought the officer  
13 needed, what, additional training maybe?

14 A. That did happen, yes. I would suggest,  
15 at the very least, if I thought it was problematic  
16 enough to address it, I would let the agency know I  
17 wanted to sit down with that officer and at least  
18 debrief the incident and have a discussion about it.

19 Q. Do you remember a couple of incidents  
20 where you actually took some action?

21 A. Yes. We had one incident where a  
22 gentleman who had been shot was, as far as the officers  
23 knew was the victim of a shooting. He was inside of  
24 his apartment. He was present with the officers and  
25 the medic. The medics looked at his injury and

1 indicated that it appeared to them that it might be a  
2 life-threatening injury.

3 The man was very well-aware of his  
4 circumstances, his surroundings, and his mental acuity  
5 was good. He indicated he didn't want to go to the  
6 hospital. The medics told the officer on the scene  
7 that he needed to go to the hospital, but he was  
8 refusing treatment -- knowingly, voluntarily and  
9 intelligently refusing treatment.

10 The officer, pursuant to medics saying he  
11 needed to go to the hospital, displayed a taser and  
12 said, "Get on the stretcher or I'm going to tase you."  
13 The gentleman reluctantly agreed to get on the  
14 stretcher, but when he wasn't moving fast enough, they  
15 went to physically assist him. He pulled his arm away,  
16 and the officer considered that to be some sort of a  
17 swing or resistance towards the medic, so he tased the  
18 gentleman. They put him on the stretcher and took him  
19 to the hospital, and he continued to maintain he didn't  
20 want to be treated.

21 I contacted our assistant chief at the  
22 time, and I let him know I think this is problematic.  
23 It's not for me to decide where this is  
24 constitutionally as a factual matter, but I think that  
25 nonetheless, if it was turned into an issue, I think we

1 would have a problem, so we need to at least address it  
2 and then get with the officers and make sure we have  
3 all the information and then kind of debrief it with  
4 them. Then the agency can decide as a disciplinary  
5 matter whether or not they wanted to do anything with  
6 that. Disciplinary issues were not my concern.

7 Q. Was that involving Internal Affairs?

8 A. If that's the direction the agency wanted  
9 it to go, yes.

10 Q. Do you remember another one?

11 A. Yes. We had one officer who responded to  
12 a domestic between a mother and her son. The son, who  
13 was, I believe, a juvenile in mid to late teens, was  
14 clearly not happy that the officer was there. The  
15 officer was trying to talk to him. He was refusing to  
16 be cooperative with the officer. He was moving in and  
17 out of the apartment because the front door was open.  
18 And he went to move past the officer and intentionally  
19 brushed up on the officer. The officer momentarily  
20 grabbed him by the throat and pushed him up against the  
21 door for about one second and then let go. He didn't  
22 clamp down on his neck or restrict his airflow or  
23 ability to breathe, but for us, it was essentially a  
24 de facto policy violation because our policy prohibited  
25 that.

1                   That was really nothing more than sitting  
2 with the officer and talking about how we don't permit  
3 that. It's a violation of policy. He said, "Well, I  
4 was trained to do that," and I said, "Not by us." He  
5 said, "If the chief has a problem with this, I'll bring  
6 in my martial arts instructor and he'll say that I was  
7 trained to do this." I reiterated to the officer that  
8 that doesn't matter. Your martial arts training does  
9 not control over a policy restriction. He says, "Well,  
10 I don't really care. I would do it again." That  
11 officer was released. Not by me. It was just my job  
12 to have that conversation with him.

13               Q.     And you wrote lesson plans for classroom  
14 instruction on use of force as well as for physical  
15 skills, intermediate force options and use of deadly  
16 force. Now, tell me what qualified you for writing the  
17 lesson plans.

18               A.     It was one of my assigned  
19 responsibilities within the training division. I would  
20 agree that just because somebody holds an instructor's  
21 certification, especially a police officer, doesn't  
22 necessarily qualify them to write a lesson plan  
23 regarding use of force. They can, but it was always an  
24 interest of mine to do quite a bit of homework and  
25 research and seek guidance from people that knew more

1 about it than me in preparing those types of lesson  
2 plans. That's what I did. My agency trusted me to do  
3 it, so I continued in doing it and learned a lot as I  
4 went.

5 Q. Did you ever get the city attorney's  
6 office involved when you created these lesson plans?

7 A. The only time I got the city attorney's  
8 office involved was when I wrote a training bulletin on  
9 the Ronald Armstrong v. Village of Pinehurst case when  
10 the Fourth Circuit ruled on that matter. It's not as  
11 clear as I would like it to be. I took what I  
12 interpreted from reading that case, created a training  
13 bulletin. My lieutenant and I, who, at the time was  
14 Morgan Tiegens -- got reassigned to the training  
15 division -- he and I went and sat down with the city  
16 attorney. I handed him the training bulletin. I said,  
17 "This is how I interpret this case. Can you please  
18 review it and tell us if we are either on or off  
19 track?" He called us back, and he said your training  
20 bulletin interprets it the same way that I do.

21 Q. Who was that? Do you remember?

22 A. Bob Pealo.

23 Q. Who?

24 A. Bob Pealo. He attended all of our  
25 shooting debriefs, and then that was primarily how I

1       knew Mr. Pealo.

2               Q.     When you had your classes, did you ever  
3       have any attorneys from the city attorney's office to  
4       come and teach any of your classes for you?

5               A.     We had Commonwealth's attorneys on  
6       occasion come to teach our classes. We did run into a  
7       few problems doing that. One year we had a four-hour  
8       block set aside for Miranda and some other  
9       constitutional issues. It started out with one of the  
10      senior Commonwealth attorneys teaching the four-hour  
11      block. By the end of the session -- not the four-hour  
12      block, but by the end of the year, they had the junior  
13      Commonwealth attorney in their place to come in and  
14      teach it. What was supposed to be four hours turned  
15      into about an hour and a half. That wasn't the only  
16      time we had them come in. We did have them come in  
17      other times.

18               There were times when we saw things a  
19      little bit differently, there were some things that I  
20      observed in the use of force reports that I wanted to  
21      address, as sometimes the Commonwealth's Attorney's  
22      Office wouldn't address them the way we wanted them to.

23               Q.     Do you recall any particular ones?

24               A.     Yes, specifically issues of pat-downs, a  
25      frisk search. Officers would generally, when asked,



1 "Why did you pat the suspect down," would routinely  
2 give the answer, "I did it for my safety." I was over  
3 years and years and years impressing upon them that  
4 that is not justification. That's the underlying  
5 purpose for the pat-down. But it provides no  
6 justification whatsoever.

7 The Commonwealth's attorney came in.  
8 They were teaching pat-downs. They said, "Do you know  
9 why you do pat-downs?" The officers engaged them a  
10 little bit. They said, "For your safety." So on the  
11 break, I pulled them aside, and I said, "Can you please  
12 not present it that way?" I said that I don't have a  
13 problem with you explaining that that's the purpose of  
14 a pat-down, but I really need you to get into the  
15 details relating to justification -- the types of  
16 suspicious factors that they need to observe and  
17 articulate in order to justify a pat-down.

18 They wanted to go back and forth about --  
19 well, it is for your safety. I reassured them that I  
20 understand that, but that's not what I want the  
21 officers to understand and then move on. That's not  
22 enough.

23 Q. Did they ever resolve that?

24 A. Honestly, I'm not even sure. I think  
25 that those Commonwealth attorneys were replaced by some

1 others that came out later.

2 Q. There was a policy -- there is a policy  
3 dealing with the police department and the  
4 Commonwealth's Attorney's Office that indicates that if  
5 there are some felony charges that are brought against  
6 suspects, that they have to be cleared by the  
7 Commonwealth's Attorney's Office. Are you familiar  
8 with that?

9 A. Not exactly. It almost sounds like, are  
10 you referring to the code that says that if a civilian  
11 wants to obtain a felony warrant, they either have to  
12 through the Commonwealth Attorney's Office or involve  
13 the police department?

14 Q. No. What I mean is, in terms of felony  
15 arrests -- obtaining warrants by police officers in  
16 felonies, they have to consult with the Commonwealth's  
17 Attorney's Office in Newport News?

18 A. If that is a policy, it's a new one. It  
19 was never like that while I was there. All the way up  
20 to my retirement, it was never like that.

21 Q. Here you have on page 2 you were assigned  
22 to oversee the field training program. What program  
23 was developed? Was it in-house at the Newport News  
24 Police Department?

25 A. The field training program is what we